



UNITED STATES PATENT and TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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Mailed: JUL 7 2003

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Paper Number: 12

In re application of :
W.G. Don Korff : DECISION ON
Serial No. 09/837,317 : PETITION
Filed: April 19, 2001 :
For: DEVICE FOR LOCATING AND RETRIEVING SMALL ARTICLES :

This is a response to the PETITION TO REINSTATE TO ACTIVE STATUS, filed May 27, 2003. The petition requests that the abandonment, as set forth in the Notice of Abandonment of April 22, 2003, for failure to file a proper response to the Office letter mailed September 13, 2002 be withdrawn. The petitioner asserts that the Office letter was not received by the applicant.

DECISION

The instant request is accepted as a timely petition under 37 C.F.R. 1.181 (no fee), and is evaluated under the procedures regarding an acceptable showing of non-receipt of an office action. See MPEP 711.03(c)(II).

A review of the petitioner's evidence indicates that the request cannot be granted. As set forth in MPEP 711.03(c) II- PETITION TO WITHDRAW HOLDING OF ABANDONMENT BASED ON FAILURE TO RECEIVE OFFICE ACTION :

"The showing required to establish the nonreceipt of an Office communication must include a statement from the practitioner stating that Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in the practitioner's statement." (emphasis added)

The evidence presented is insufficient to establish that the above noted Office letter was not received by the petitioner. The evidence provided includes a statement by the petitioner that the Office action (i.e. final rejection) dated September 13, 2002 has indeed never been received.

However, the instant petition does not contain a statement attesting that a search of the file jacket and docket records was made, and the result of such search revealed that the Office letter dated September 13, 2002 was not received and it fails to submit a copy of the docket record where the nonreceived Office letter would have been entered had it been received.

Accordingly, this application stands abandoned.

The Petition is **DENIED**.



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